

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SHARI IVES

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Appeal No. 2001-1334  
Application No. 09/251,656

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ON BRIEF

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Before COHEN, McQUADE and BAHR, Administrative Patent Judges.  
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Shari Ives appeals from the final rejection of claim 1, the only claim pending in the application.<sup>1</sup>

THE INVENTION

The invention relates to a diaper having a pocket for (1) storing items such as baby powder, diaper cream and wet wipes, and (2) receiving in rolled-up form the rest of the diaper when soiled to facilitate disposal. Claim 1 reads as follows:

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<sup>1</sup> Claim 1 has been amended subsequent to final rejection.

1. A diaper with a pocket adapted for the convenient storing of baby-changing related objects comprising, in combination:

an exterior layer of a liquid impervious plastic material having an interior face and an exterior face and having a generally horizontal upper edge positionable around a baby and having a front and a rear and a bottom and leg holes therethrough;

an interior layer of a liquid absorbing material having an interior face and an exterior face and having a generally horizontal upper edge positioned around a baby and having a front and a rear and a bottom and leg holes therethrough;

separable vertical edges extending downwardly from the upper edges to the upper extent of the leg holes with adhesive strips for securing the layers on the baby;

an intermediate layer of a liquid impervious plastic material in a generally rectangular configuration exterior of the interior layer and coupled at the periphery to the interior face of the exterior layer at the rear, the intermediate layer having an upper edge adjacent to the upper edge of the exterior layer and extending horizontally for the majority of the extent of the rear and extending vertically for the majority of the extent of the rear thereby forming a large pocket;

an elongated horizontal slit in the exterior layer immediately below the upper edge of the intermediate layer for allowing the placement into and removal from the pocket of the baby-changing related objects; and

a strip of an adhesive within the pocket on the interior surface of the exterior layer immediately beneath and parallel with the slit with a peel strip removably located thereon whereby the diaper may be rolled up and turned into the pocket and sealed for easy disposal.

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#### PRIOR ART

The reference relied on by the examiner as evidence of anticipation is:

Schaar	3,731,689	May 8, 1973
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#### THE REJECTIONS

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter the appellant regards as the invention.

Claim 1 also stands rejected under 35 U.S.C. § 102(b) as being anticipated by Schaar.

Attention is directed to the appellant's brief (Paper No. 8) and to the examiner's final rejection and answer (Paper Nos. 4 and 9) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

#### DISCUSSION

##### I. The 35 U.S.C. § 112, second paragraph, rejection

We shall summarily sustain this rejection as the appellant has not challenged the examiner's determination that claim 1 is indefinite because it prompts the question: "is Applicant claiming the body as part of the claimed combination? If not, on line [12], 'positioned' should be - -positionable--" (final rejection, page 3).<sup>2</sup>

II. The 35 U.S.C. § 102(b) rejection

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Schaar discloses a disposable diaper which is described in the following terms:

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<sup>2</sup> The word "positioned" appears on line 11 of claim 1 as amended subsequent to final rejection.

. . . the invention particularly concerns the disposable diaper of the type having a fluid absorbent pad 12 and at least two layers 14 and 16 of fluid impervious sheet material attached to the pad 12 in such a manner as to form a pouch 18 (FIG. 4). The pad 12 preferably includes a fluid pervious cover sheet 20 as illustrated in FIG. 4. The layers 14 and 16 are connected at their edges 22, 24 and 26, these edges also coinciding with three of the edges 27, 28 and 29 respectively, of the pad 12 to define three of the edges of the diaper.

. . .  
. . . [T]he outermost layer 16 is slit near one end 31 of the diaper along a line forming an edge 30 (FIG. 3) at an angle to edges 22 and 24 and along a longitudinal center line, to form a pair of integral wings 32 and 34 extending from opposite edges 22 and 24 of the layers 14 and 16 and of the diaper. The wings 32 and 34 are foldably attached to the bottom layer 14 so that the diaper can be stored (FIG. 5) with the wings 32 and 34 overlapping bottom layer 14. . . .

When the diaper is to be placed on the baby, the wings fold outwardly along the edges 22 and 24 to give the configuration shown in FIGS. 2 and 3. Although the wings 32 and 34 are disclosed as having approximate equal lengths, such is not necessary. Equal length does provide, however, a more aesthetic appearance.

. . .  
The pinless function of this diaper is preferably accomplished by applying a pressure sensitive adhesive to the zones indicated by the numeral 50, FIGS. 2, 5 and 6. . . . Removable facing strips may be applied to the adhesive zones 50, so that the wings do not stick until the diaper is ready for use. . . .

. . . [T]he slit edge 30 of the layer 16 defines the opening into the pouch 18 which permits the turning inside out of the diaper. When the diaper is soiled, one hand is then slipped into the pouch 18 to the edge 26 of the layer 16 where that edge is grasped. At the same time the other hand pulls on the slit edge 30 of the layer 16, the two hands crossing over so as to turn the pouch inside out. The resulting configuration places the inside layer 14 completely exposed on one side of the folded up diaper with the layer 16 on the other side, the absorbent pad 12 being thus completely enclosed [column 2, line 5, through column 3, line 63].

According to the examiner (see page 4 in the answer), the Schaar reference responds to all of the limitations in claim 1 in that it discloses an "exterior layer" in the form of fluid impervious layer 16, an "interior layer" in the form of absorbent pad 12 and/or fluid pervious cover sheet 20, "leg holes" in the form of the leg openings shown in Figure 1, "vertical edges" in the form of edges 22 and 24, an "intermediate layer" in the form of fluid impervious layer 14, a "horizontal slit" in the form of the slit which defines edge 30, and a "strip of an adhesive" and a "peel strip" in the form of the adhesive and facing strips in zones 50. Presumably, the examiner also considers Schaar to disclose a "pocket" in the form of pouch 18.

This analysis is flawed with respect to recitation of the "strip of an adhesive." As indicated above, the claim requires the strip of an adhesive to be "within the pocket on the interior surface of the exterior layer immediately beneath and parallel with the slit." To the extent that Schaar discloses respective strips of adhesive in zones 50, a person of ordinary skill in the art would not view either strip as being within the pocket/pouch 18 or on the interior surface of exterior layer 16 immediately beneath and parallel with the slit 30. The examiner's explanation to the contrary (see pages 5 and 6 in the answer) rests on an unreasonable interpretation of the Schaar disclosure stemming from an ill-advised attempt to read all of the limitations in the claim on the Schaar diaper.

Since Schaar does not disclose each and every element of the diaper recited in claim 1, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of this claim.

SUMMARY

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The 35 U.S.C. § 112, second paragraph, rejection is sustained, and the 35 U.S.C. § 102(b) rejection is not. Since at least one rejection is sustained, the decision of the examiner to reject claim 1 is affirmed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOHN P. McQUADE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
JENNIFER D. BAHR	)	
Administrative Patent Judge	)	

JPM/gjh



Appeal No. 2001-1334  
Application No. 09/251,656

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***GJH***

Appeal No. 2001-1334

Application No. 09/251,656

APJ McQUADE

APJ BAHR

APJ COHEN

AFFIRMED

November 4, 2002